IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7118 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURAT DISTRICT PANCHAYAT & 1 - Petitioner(s)
Versus
DEVELOPMENT COMMISSIONER & 1 - Respondent(s)

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Appearance :
1,MR SV PARMAR for Petitioner(s) :
Mr. Dipen Desai, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH
Date : 22/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr. S.V. Parmar, learned advocate for the petitioners. Mr. Dipen Desai, learned AGP for the respondents.

2. Present is a petition under Article 226 of the Constitution of India challenging the vires of Section 294 of the Gujarat Panchayats Act, 1961 since repealed after coming into force of the Gujarat Panchayats Act, 1993 (Act No.8 of 1993). According to the petitioners, the Development Commissioner exercising the powers conferred upon him under Section 294 of the Repealed Act, made an order against Jilla Panchayat, Surat by observing that its resolution dated 22.8.1989 shall remain in abeyance and suspended and the District Panchayat, Surat would be given an opportunity of hearing. It is to be seen that, the present writ application was filed in the year 1991, i.e., when 1961 Act was in force. After coming into force of 1993 Act, ordinarily nothing would survive for us to decide in the matter because a Court is not required to enter into academic discussions at the request of an Advocate just to satisfy the argument of the Counsel, nor the Court is required to transfuse life in a dead matter.

3. Once 1961 Act stands repealed, then other provisions contained in the said Act would stand repealed, and this Court would not be required to consider the constitutional validity of any provision of the said Act.

4. Mr. S.V. Parmar, learned counsel, however, submits that as the action of the Development Commissioner contained in his order dated 17.9.1991 is saved under Section 276(J) of the 1993 Act and as the petitioners are aggrieved by the said action, this Court must enter into the controversy and pass appropriate orders.

5. It is to be seen that old Section 294 has been brought into the new Statute of 1993 in Section 249.

6. So far as validity of Section 249 of 1993 Act is concerned, the same is not under challenge before us nor Mr. S.V. Parmar submits that it has been challenged before us.

Under the circumstances, we are not required to consider the constitutional validity of Section 249 of the Gujarat Panchayats Act, 1993. At the same time, we would also observe that, in view of the repeal of Act of 1961, the constitutional validity of Section 294 is not required to be considered.

7. So far as the merits of order dated 17.9.1991 are concerned, a perusal of the order shows that the Development Commissioner suspended the operation of the Resolution No.3 dated 22.8.1989 taken by District Panchayat, Surat and directed hearing into the matter by giving an opportunity of hearing to District Panchayat, Surat. The order also shows that the further date of hearing was fixed on 26.9.1991. If that be so, the petitioners could always bring to the notice of the Development Commissioner that he was exercising such powers which were not vested in him or was refusing to exercise the powers vested in him. They could also satisfy the judicial conscience of the Development Commissioner that the

Resolution dated 22.8.1989 was in accordance with law and did not infringe or violate any provisions of law, rules, regulations or circulars.

8. In any case, the action of the Development Commissioner cannot be taken to be bad. The Development Commissioner was acting within his authority by issuing a notice and provide an opportunity to the petitioner to appear and satisfy the Development Commissioner.

9. The order dated 17.9.1991 cannot be faulted with.

10. Since after repeal of 1961 Act, it would be waste of time to consider the constitutional validity of any provision of the 1961 Act. The petition is dismissed. Rule is discharged. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

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